

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-Seventh Session
February 6, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:36 p.m. on Wednesday, February 6, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Mark Hutchison

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Wayne Archer, Committee Secretary

OTHERS PRESENT:

Renee Olson, Administrator, Employment Security Division, Department of
Employment, Training and Rehabilitation
Eugene Mendiola, Assistant Recorder, Clark County
Debby Conway, Recorder, Clark County
Marla McDade Williams, Deputy Administrator, Health Division, Department of
Health and Human Services
Leticia Metherell, Health Facilities Inspection Manager, Health Division,
Department of Health and Human Services
Dennis Perea, Deputy Director, Department of Employment, Training and
Rehabilitation

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Frank Woodbeck, Director, Department of Employment, Training and Rehabilitation
Marcia Turner, Vice Chancellor, Health Sciences, Nevada System of Higher Education
Ray Bacon, Nevada Manufacturers Association

Chair Atkinson:

I will introduce the rules of the Senate Committee on Commerce, Labor and Energy ([Exhibit C](#)).

SENATOR HARDY MOVED TO APPROVE THE RULES OF THE SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Atkinson:

I will now introduce the "Committee Brief" ([Exhibit D](#)).

Marji Paslov Thomas (Policy Analyst):

The jurisdiction of the Committee can be found on page D4 of the "Committee Brief", [Exhibit D](#). Page D6 identifies policy issues the Committee will consider during the Legislative Session. A list of important legislative deadlines can be found on page D9. A list of State agency contacts which frequently appear before the Committee is on page D10. Appendix B provides a more detailed description of the chapters of the *Nevada Revised Statutes* (NRS) that are relevant. Appendix C is a list of the committee staff contact information.

Chair Atkinson:

I will now open the meeting on Senate Bill (S.B) 35.

SENATE BILL 35: Makes various changes concerning the Employment Security Division of the Department of Employment, Training and Rehabilitation. (BDR 53-372)

Renee Olson (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):

The Employment Security Division (Division) requested S.B. 35 to remove outdated language in chapters 612 and 247 of the NRS. The terms "unemployment compensation service" and "state employment service" will be replaced with "Division." Existing law authorizes the Division to bring civil actions to collect amounts owed from overpayment of unemployment benefits. Existing law also provides that no fees may be charged to the State for filing any such action. Section 7 of S.B. 35 amends NRS 612.645, subsection 2 by extending this exemption to include charges for recording, copying or certifying documents filed with county recorders. Section 8 amends NRS 247.305 to prohibit county recorders from collecting fees from the Division for copying, certifying or recording documents in connection with civil actions to collect money owed to the Division.

Under existing law, county recorders do not charge the Division for filing or recording judgments. This simplifies the process for initial filing. Some county recorders assert NRS 612.645 does not relieve the Division from paying fees to record the satisfaction of judgments and the release of liens. The current process relies on the debtor to file and record the release of lien documents. The Division sends the documents to individual debtors with instructions on filing the documents with the appropriate county recorder. Since the Division creates liens by recording judgments, Counsel has advised the Division it has a corresponding responsibility to release liens once debts are satisfied. Failure to record the satisfaction of judgments and the release of liens could adversely impact debtors by clouding the ownership of property. This leaves the State vulnerable to civil actions because the judgments obstruct the title to property and impose other adverse financial effects upon debtors. Senate Bill 35 expedites the release of judgments. Specifically, it exempts the Division from paying fees associated with the release of liens.

Senator Settlemeyer:

Would it not be better to charge the debtor for the release of liens?

Ms. Olson:

Are you asking if the Division could charge debtors the fee as part of the debt?

Senator Settlemeyer:

No. I understand why the State wants to be exempt from paying a fee, but an exemption creates an undue burden for a county. Could we allow county recorders to charge debtors for the release of liens?

Ms. Olson:

We send the debtor the documents for the release of a lien and instruct the debtor to record these documents with the appropriate county. We expect the county to charge debtors a fee to record the release of liens. Not all county recorders actually charge the fee; there is no consistent process. As a result, the title may be clouded when a debtor sells the property at a later date.

Eugene Mendiola (Assistant Recorder, Clark County):

We work with all the recorders in the State, and all charge for the recording of releases of liens. *Nevada Revised Statutes* 247 already exempts charging for lien recordings.

Debby Conway (Recorder, Clark County):

I met with the Nevada Recorders Association. Its members oppose S.B. 35 because they feel the costs of releasing liens could be charged to debtors and included in the repayments to the State. Senate Bill 35 would set a precedent for other State agencies to request exemption from other fees in the same manner.

Chair Atkinson:

Ms. Conway, you stated the other county recorders are opposed to S.B. 35. Have they submitted a letter expressing their opposition?

Mr. Mendiola:

Washoe County submitted a letter of opposition to us, but we are not aware if they submitted a letter directly to the Committee.

Chair Atkinson:

The Committee has not received any communication from them.

Mr. Mendiola:

As Senator Settlemeyer mentioned, debtors are traditionally responsible for paying for the recording of the release of liens. Having the counties collect the

fee up front is a simple solution. Clark County has the largest volume, but the impact is also felt in smaller counties.

Senator Hutchison:

What is the fiscal impact to Clark County?

Mr. Mendiola:

For Clark County, the fiscal impact over the last 3 years averaged \$600 per year.

Senator Hutchison:

Are you saying if S.B. 35 passes, the fiscal impact to the Clark County Recorder's office is \$600 in terms of lost revenue?

Mr. Mendiola:

Correct.

Senator Hutchison:

Your larger concern is that you do not want other State departments or agencies to request similar exemptions.

Mr. Mendiola:

Correct. It would establish a precedent for other State and local agencies.

Chair Atkinson:

I would direct the Committee's attention to the "Local Government Fiscal Note" to BDR 53-372 ([Exhibit E](#)). According to Clark County Accounting Services, the fiscal impact would be as follows: \$500 for fiscal year 2012-2013, \$1,000 for FY 2013-2014, \$1,000 for FY 2014-2015 and \$2,000 for future biennia. As Mr. Mendiola suggested, the fiscal impact is greatest for Clark County. Washoe County and Carson City have slightly lower fiscal impacts. I understand a precise estimate of the fiscal impact is difficult to obtain. Mr. Mendiola said it would be \$600, but the response from Clark County indicates it would be \$500. Either way, the fiscal impact is minimal.

Chair Atkinson:

We will close the hearing on S.B. 35 and open the hearing on S.B. 40.

SENATE BILL 40: Revises provisions relating to medical laboratories. (BDR 54-314)

Marla McDade Williams (Deputy Administrator, Health Division, Department of Health and Human Services):

Senate Bill 40 removes provisions governing the applications to become licensed medical laboratories. It also allows qualified medical professionals to perform simple tests without the need for laboratory personnel certification. It clarifies the Health Division's authority to impose administrative regulations and protect public health without creating an unnecessary burden on laboratories.

Under existing statutes, a medical laboratory licensing application is required to be made under oath. Section 1 of S.B. 40 removes the under oath requirement and allows the Health Division to outline acceptable forms of identification for applications.

Section 2 clarifies that regulations and penalties imposed by the Health Division may not be more stringent than those imposed by the federal government. Section 3 provides flexibility for the State Board of Health to set requirements for certification of laboratory assistants through regulations instead of statutes.

Sections 4 and 5 clarify that certain licensed medical professionals may perform waived tests. Section 6 changes the way medical personnel are assessed penalties because the Division does not have the authority to take actions against medical personnel for violations of regulations. We can only take action for violations of statutes. Most of our rules are promulgated through regulation and not statute.

Sections 7 and 8 are changes made by the Legislative Counsel Bureau (LCB) to keep the language in NRS 484C.250 and 488.500 consistent with current statutes. Note that the National Certification Agency for Medical Laboratory Personnel is referenced in subparagraph (2) of paragraph (a) of subsection 1 of section 7 of S.B. 40. This agency no longer exists. It merged with the American Society for Clinical Pathology. I have a list of national organizations which provide certification in phlebotomy ([Exhibit F](#)).

Senator Hutchison:

I do not understand the reason for removing the under oath requirement. Can you clarify why it is being removed?

Ms. Williams:

The Health Division is developing a Web-based application system. The under oath requirement prohibits us from fully implementing an electronic licensing system. Under S.B. 40, the Health Division would specify acceptable forms of identification. Our authority is to revoke the license if identification is not acceptable. We do not have criminal prosecution authority. Our authority is limited to revoking the license. If necessary, we may refer cases to the Office of the Attorney General.

Senator Hutchison:

Does the oath requirement only apply to the identity of the applicant?

Ms. Williams:

Yes.

Senator Hutchison:

What is the Health Division's authority to fine individuals or facilities when they violate regulations?

Leticia Metherell (Health Facilities Inspection Manager, Health Division, Department of Health and Human Services):

For the most serious violations, such as those which create or have the immediate potential to create serious injury, the Health Division may impose penalties up to \$10,000.

Senator Hutchison:

In the event of such an egregious error, would the threat of litigation not be a greater deterrent than a \$10,000 penalty?

Ms. Williams:

You are correct. A \$10,000 penalty may not be a deterrent to unlicensed facilities, but we do not have authority to take legal action beyond revoking licenses. Private sector attorneys may consider our findings to determine which cases should move forward.

Senator Hutchison:

Damages in civil actions involving serious injuries or death would likely exceed \$10,000. What is the reasoning behind a \$10,000 penalty?

Ms. Williams:

Deterrence is the purpose of all penalties. Penalties are an indicator to the public the Division is performing its due diligence.

Fines often reach this level, but we will not necessarily revoke the license of the facility. We ensure facilities put systems in place to prevent another occurrence. Not having penalties does a disservice to the public. It is important to hold a facility accountable while still ensuring quality care is provided.

Senator Settlemeyer:

Can you tell us how many repeat offenders the Division deals with and how many fines were levied last year? If you do not have the answer, can you get it to us later? Perhaps we can eliminate the \$250 minimum fine and simply allow the division to impose a fine up to \$10,000.

Ms. Williams:

The Health Division does not have the authority to impose any administrative sanctions against a medical laboratory. We can only take action against entities for violation of statutes. We have entities which have violated regulations, but we have not been able to move forward with them.

We are modeling this after our oversight of health facilities, which outlines the scope and severity of violations to determine what sanctions the Division may impose. All actions are subject to due process. We begin with an informal review. After the informal review, our decision can be appealed to a formal review. We envision a similar oversight process for this program.

Senate Bill 40 allows the Health Division to establish fines based on regulations. For some facilities, fines begin at \$250. At this level, we waive the fines if they correct the problem. The Legislature would have to approve these regulations. We do not have that experience now because we do not have the authority to impose penalties.

Senator Hardy:

What is a licensed facility? Is that a doctor's office?

Ms. Metherell:

There are several types of laboratories. There are larger laboratories, such as Quest. There are smaller laboratories, such as those in physicians' offices. Laboratories at a hospital are obviously more complex than those located in a physician's office. There are different requirements for each type of laboratory.

Senator Hardy:

Is each of those a medical facility in a licensed laboratory?

Ms. Metherell:

They are all considered medical laboratories. We have licensed health facilities, such as a hospital. Then we have medical laboratories, both within a hospital and freestanding.

Ms. Williams:

Quest is not licensed as a medical facility. It is a licensed laboratory, whereas hospitals are licensed as hospitals. The hospital has laboratory licenses for its laboratories. Family practices are not licensed as medical facilities, with the exception of those that perform anesthesia. The offices of most physicians are not licensed as physicians' offices. They have a business license for those services.

Senator Hardy:

If a family practice performs non-waived tests such as complete blood counts (CBC) or chemistries, would it be licensed as a medical facility or as a medical laboratory?

Ms. Metherell:

A family practice is considered an exempt laboratory if the office performs waived tests. An office performing non-waived tests would require a higher level of laboratory licensing. They are all licensed as medical laboratories, but there are different categories based on the complexities of the tests. These categories include exempt laboratories, registered laboratories and licensed laboratories.

Senator Hardy:

Your testimony is confusing. If a family practice performs CBCs and chemistries, will they be affected by this?

Ms. Williams:

A family practice will be affected if it has a license. A physician's office would likely be an exempt laboratory. Exempt laboratories would be subject to sanctions under S.B. 40. An important consideration is how much harm occurred. Low-volume facilities tend to have less egregious findings than high-volume facilities, which may not have oversight.

For example, a laboratory recently failed to verify its staff members were licensed. This oversight caused harm to patients, but it was not harm due to bad laboratory testing. The laboratory was issued a license from our agency, but it did not adhere to our requirements for criminal background checks. Although this resulted in harm to patients, we did not have authority to take any action beyond pulling the laboratory's license. The laboratory corrected the problem and began conducting background checks. By doing so, the laboratory was found to be in compliance. In this case, it did not make sense to revoke the license and put them out of business.

Senator Hardy:

As I read subsection 2 of section 5 of S.B. 40, licensed practical nurses (LPN) and registered nurses (RN) would be able to perform laboratory tests. Certified nursing assistants (CNA) would not be able to perform laboratory tests. Likewise, section 7 of S.B. 40 would grandfather certain individuals. Interestingly, subparagraph (2) of section 7 does not actually require the individual to take the examination. The individual is only required to be qualified to take the examination.

Ms. Metherell:

To address your first question, LPNs and RNs may perform waived tests. The CNAs working in a licensed facility would still have to be certified laboratory assistants to gain the knowledge needed to perform the test. Section 9 would grandfather laboratory assistants with current licenses. This prevents them from having to be relicensed. This would begin with new licenses with the new criteria when the new regulations are passed.

Senator Hardy:

That is not correct. It does require individuals be licensed.

Ms. Metherell:

They must be certified laboratory assistants.

Senator Hardy:

It does not require certification either.

Ms. Metherell:

Are you speaking about section 7?

Senator Hardy:

I am referring to section 7 and section 8.

Ms. Metherell:

The LCB made the changes in subparagraph (2) of section 7. Section 7 deals only with the admissibility of blood tests in criminal actions. This is not for qualification of licensure. Qualifications of licensure are addressed in NRS chapter 652. The blood test would be admissible in court if an individual met the description of NRS 652.127. We are changing NRS 652.127, which is why LCB removed part of the language referencing NRS 652.127 in section 7. The LCB is adding language referencing the examinations because those examinations are already in statute. In effect, this change does not affect the current statutory requirement for law enforcement. Without the change, currently licensed nurses would have to follow all future regulations. As Ms. Williams mentioned, it should be noted the national certification agency listed in subparagraph 2 of section 7 no longer exists.

Senator Hardy:

Would S.B. 40 prohibit medical assistants who already perform these tests within the scope of their work from performing these tests in the future?

Ms. Metherell:

No. For the certification portion, medical assistants would have to meet the requirements of NRS 652.127 to become certified. Section 7 only indicates under what conditions blood tests performed by medical assistants can be admissible in court.

Senator Hardy:

Chair Atkinson, I need more clarification of my question before we move forward with a work session for S.B. 40.

Chair Atkinson:

Ms. Williams, please provide an answer to Senator Hardy before we move forward with a work session.

We will now close the hearing on S.B. 40 and open the hearing on S.B. 52.

SENATE BILL 52: Requires the adoption of regulations to establish a student loan program to assist unemployed persons in obtaining certain job-related certifications and credentials. (BDR S-374)

Dennis Perea (Deputy Director, Department of Employment, Training and Rehabilitation):

I will read my written testimony ([Exhibit G](#)).

Senator Hutchison:

Why will the program target health care initially, and who made that decision?

Mr. Perea:

The decision to target the health care industry was due to the high rate of job growth in the sector. We wanted to make an immediate impact, but we also wanted to be able to expand to the other eight sectors as needed.

Senator Hutchison:

Is there no other way to do this? Is there no federal student loan program for certification programs?

Mr. Perea:

Students do not usually receive credit for short-term certification programs. It is my understanding federal student loan programs do not cover noncredit programs. The goal is to target individuals on the "first rung" of employment to make the most impact in the time available.

Senator Hutchison:

Are there alternative programs to accomplish this? It sounds like there are none except for degree-seeking students. Is that correct?

Mr. Perea:

The Workforce Investment Act of 1998 has the ability to assist with these types of certification programs, and we hope to increase the agency's contribution through Governor Sandoval's Executive Order 2012-18.

Senator Hutchison:

What role will the State play in funding this program? Will the State fund this program?

Mr. Perea:

The money will come from the State. We wanted to include this program in our budget, but there were questions about using existing training funds to cover the cost. We came up against the deadline and the decision was made to put it before the Legislature as a policy bill.

Senator Hutchison:

This is different from federal student aid programs, which guarantee loans of students in public institutions. This bill would actually fund the program rather than simply guarantee that a private financial institution would finance this effort.

Mr. Perea:

Correct.

Senator Hardy:

This is a revolving fund. Students repay the loans, and the money then funds new loans.

Mr. Perea:

Yes, but the drop-dead date is June 30, 2015.

Senator Hardy:

Since the deadline is before the next Legislative Session, the next Legislature would determine if it wanted to continue the revolving fund. What happens to the fund if the program ends?

Mr. Perea:

The interest would revert into a separate account to help administer the program. Under S.B. 52, administrative costs may not exceed 10 percent of the loans outstanding. After the deadline, all funds revert to the General Fund.

Senator Hardy:

Do students need to repay the money by 2015?

Mr. Perea:

No. The money reverts to the General Fund as loans are repaid.

Senator Hutchison:

How did the State pick the health care sector? Employers from every sector would be interested in a program such as this. I took a tour of the Switch company in Las Vegas, and the company begged for engineers to staff their data processing facility. Did the State have a compelling interest to start with the health care industry?

Mr. Perea:

This program was borne out of the Nevada Health Care Sector Council (Health Care Council). Hopefully there is no delay in going from one sector to the next. We only focused on health care first because it came out of the Health Care Council.

Frank Woodbeck (Director, Department of Employment, Training and Rehabilitation):

The Health Care Council identified a particular need in the health care information technology category. We came up with this certification program to fulfill that need. I am personally in discussions with Switch CEO Rob Roy to develop a program for cloud computing. Those are going to be long-term programs, but we are certainly looking to fill those needs as well.

Senator Hutchison:

Good. My overall concern is letting market forces determine which jobs are most in demand. I want to make this available in general, as opposed to letting the government choose which sectors should have access to this money.

Mr. Perea:

We have a limited amount of funds. The idea is to narrow our focus and invest in the eight sectors targeted by the Governor's Office of Economic Development. It is a matter of choosing priorities.

Senator Hardy:

I do not see anything that precludes you from doing anything in this bill limited to health care. I do not see anything that says you have to do this in health care. If we pass this bill, our legislative intent is to make sure we get jobs that are certificate able to do something and I would be pretty amenable to anything that does that. So, in the administration if it comes down to health, fine, but I do not see anything precluding you from doing anything that would address Senator Hutchison's concerns.

Marcia Turner (Vice Chancellor, Health Sciences, Nevada System of Higher Education):

In addition to my duties with the Nevada System of Higher Education (NSHE), I also serve as the Chair of the Health Care Sector Council on behalf of the Department of Employment, Training and Rehabilitation (DETR). I am wearing my NSHE hat for the purposes of this hearing. NSHE had significant involvement during the discussions. The councils are engaging people in each of the sectors. We have NSHE representatives on all of the councils. When the council first began discussing the loan program, the council looked to NSHE as a resource.

Senator Hardy is correct. Senate Bill 52 limits the funding to the sector councils. This is important to the industry sectors. It is important to put a boundary on the program. There are other opportunities within the other industry sectors where NSHE has programs. One way to address the concerns raised by Senator Hutchison and Senator Hardy would be to define the training programs for industry sectors within statute, but defining priorities within a sector through the promulgation of regulations. The NSHE is happy to participate in those discussions; NSHE supports S.B. 52.

Ray Bacon (Nevada Manufacturers Association):

The Nevada Manufacturers Association (NMA) strongly supports the policy behind S.B. 52. The NMA administered a 16-week training program for unemployed computer numerical control (CNC) machinists. The State benefits

when employers hire individuals who are likely to remain employed. The NMA brings unskilled workers to the State and helps them receive certification. Even those individuals who eventually leave the State achieve long-term careers. The NMA partnered with the National Institute of Metal Working Skills for a program to train CNC machinists. We also conducted a program at Western Nevada College (WNC) in partnership with the American Welding Society.

Training programs must be industry-supported. Multiple companies must demonstrate a need. Those companies may work with DETR to develop a program. We approached WNC with our program in late November, and the first students started in February. The concept of the loan program is correct, but we understand the financial issues. There may be a way to design policies so that it can succeed even if the Legislature does not fund it this year.

Senator Hutchison:

This is a great idea. I support it. I am concerned we may end up educating individuals with our tax dollars who may leave the State. Would you oppose a provision requiring recipients to remain in Nevada for a period afterwards?

Mr. Bacon:

Other programs include claw back provisions. In most cases, the claw back provisions are limited to 5 years. I would have no heartburn with such a provision. In our program, we reviewed a list of unemployed machinists. We then selected individuals who had good track records. We felt they were likely to stay in Nevada.

Chair Atkinson:

I will close the hearing on S.B. 52.

We have several bill draft requests (BDRs) to introduce.

BILL DRAFT REQUEST 53-579: Authorizes the imposition of an administrative penalty against an employer under certain circumstances. (Later Introduced as [Senate Bill 96.](#))

SENATOR JONES MOVED TO INTRODUCE BDR 53-579.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATOR DENIS WAS ABSENT FOR THE VOTE.)

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BILL DRAFT REQUEST 58-650: Revises provisions related to electric utilities. (Later Introduced as [Senate Bill 93.](#))

SENATOR HARDY MOVED TO INTRODUCE BDR 58-650.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATOR DENIS WAS ABSENT FOR THE VOTE.)

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BILL DRAFT REQUEST 53-580: Creates the Task Force on Employee Misclassification. (Later introduced as [Senate Bill 95.](#))

SENATOR HUTCHISON MOVED TO INTRODUCE BDR 53-580.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATOR DENIS WAS ABSENT FOR THE VOTE.)

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BILL DRAFT REQUEST 52-581: Revises provisions governing certain loans.
(Later Introduced as [Senate Bill 94](#).)

SENATOR HARDY MOVED TO INTRODUCE BDR 52-581.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATOR DENIS WAS
ABSENT FOR THE VOTE.)

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Chair Atkinson:

I will adjourn the meeting at 3:33 p.m.

RESPECTFULLY SUBMITTED:

Wayne Archer,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A			Agenda
	B			Attendance Roster
	C	2	Chair Atkinson	Committee Rules Senate CLE 2013
	D	23		Senate CLE Committee Brief – Research
	E	3	LCB	Local Government Fiscal Note 2-5-13
	F	1	State Health Division	National Organizations That Provide Certification in Phlebotomy
S.B. 52	G	1	Dennis Perea, Dpt. Director DETR	SB52 Testimony DETR 2-6-13